

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 149 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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KOLI SHYAMJI CHANA

Versus

STATE OF GUJARAT

Appearance:

MR ASHOK D. SHAH for Petitioner

MR. Y.F. MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 04/02/97

ORAL JUDGEMENT (Per, Gokhale, J.)

1. This is an appeal against the judgment and order dated 22.2.1990 of the Additional Sessions Judge, Jamnagar, in Sessions Case No. 11 of 1989. The appellant and his mother were the accused in that matter.

The appellant's mother was acquitted. The appellant was convicted under Sections 302, 326 and 324 of I.P.C. For the offence under Section 302, he was awarded RI for life and fine of Rs. 10,000/- in default, RI for six months. For the offence under Section 326 of the I.P.C., he was awarded RI for two years and fine of Rs. 5,000/- in default, RI for three months. For the offence under Section 324, he was awarded RI for six months and fine of Rs. 1,000/- in default, RI for one month. The sentences were directed to run concurrently.

2. The case of the prosecution was that on or about 9th December 1988 at about 11.00 a.m. the appellant and his mother Kunverben caused the death to one Arjun Bhada and injured his brother one Hansraj Bhada, who is the complainant in the case. It is the case of the prosecution that on that date an altercation took place between the two parties regarding the work of forming a small canal being executed by the accused in their field adjacent to the field of complainant, situated in village Devpura, taluka Kalvada, District Jamnagar. The accused No.1 took out a knife and had pierced the same into the chest of Arjan Bhada. He also gave blows using the knife to inflict injuries on the complainant Hansraj Bhada. It was also alleged that Kunverben used a spade and caused injury to the complainant - Hansaraj by the reverse portion thereof. After the trial was conducted, Kunverben was acquitted for benefit of doubt by the learned Sessions Judge.

3. The main witness of the prosecution was the injured complainant - Hansraj Bhada. In his deposition, he has pointed out that with respect to the canal work, there was a dispute going on between the parties for quite some time. He further states that some time prior to the date of incident, an altercation had also taken place between the parties. On the date of incident, he states that he was in his house and he heard the shout of his brother. He went out of his house and saw that his brother had fallen down and was crying. He saw a knife in the hand of the appellant and that he had pierced the same into the chest of the deceased. In his cross examination, it is also come on the record that with respect to earlier ongoing dispute, a chapter case had filed against the complainant by the police. It is further found from the record that the land of the accused is at a place three feet higher than the level of the complainant. However, the way he was executing the work, it amounted to encroaching on a small portion of the land of the complainant and thereby it led to an altercation between the parties.

4. The accused took the plea of private defence in the trial court. However, as far as that submission is concerned, it is difficult to accept the same. But, in this Court, it was canvassed by Mr. Shah on behalf of the accused that the strained relationship between the parties, is a background, which is to be looked into and it has to be given due weightage. However, the presence of the accused on the place and the use of a weapon by him, leading to the fatal injury cannot be disputed. It was, therefore, canvassed by Mr. Shah in the alternative that the strained relationship between the parties, if it is looked into, the incident will have to be considered as not amounting to an intentional act and, therefore, the benefit may be given to the accused under Section 304 of the I.P.C. After going through the record of the matter, we accept the submission of Mr. Shah and in our view the accused could not be held to be guilty under Section 302 of I.P.C. but will have to be held guilty under Section 304 Part-I IPC. As far as the injury to the complainant is concerned, that part of the punishment is already undergone and this appeal therefore is considered only from the point of view of the punishment which is awarded to the appellant for the culpable homicide of the deceased.

5. In the circumstances, we alter the conviction of the accused appellant from that of Section 302 IPC to the one under Section 304 Part-I IPC. The appropriate punishment will be to suffer 10 years RI. Accordingly, sentence for life is converted into sentence for 10 years RI. The period of sentence which has been undergone so far will be adjusted and the balance, if any, will have to be suffered hereafter. The appeal is accordingly allowed in part.

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